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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

No. [redacted] 58

CARRIER CORPORATION, a Corporation,
Petitioner,

v.

REFRIGERATION ENGINEERING, INCORPORATED,
a Corporation,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

HERMAN SEID,
Counsel for Petitioner.

May 9, 1951

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Petitioner, Carrier Corporation, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit, entered in the above entitled case on February 12, 1951.

Opinions Below

The memorandum opinion of the District Court (R. 133-134) is unreported. The order of the Court of Appeals affirming the order dismissing the petition for injunction of Carrier Corporation (R. 293) issued without any opinion is unreported.

Jurisdiction

The judgment of the Court of Appeals was entered on February 12, 1951 (R. 294). The jurisdiction of this Court is invoked under 28 U. S. C., Sections 1254(1) and 2101(c).

Questions Presented

Does a District Court retain *jurisdiction* to enforce its own final judgment, without the necessity for filing another suit for declaratory judgment?

After a District Court has dismissed with prejudice a complaint in a patent suit finding that no infringement exists, does the District Court thereafter retain *jurisdiction* to restrain plaintiff from bringing suit against defendant when defendant's activities are exactly the same as they were prior to such dismissal?

Statement

Petitioner, Carrier Corporation, was sued by respondent for alleged infringement of United States patent 2,219,393 in the United States District Court, Southern District of California, Central Division. The complaint was filed February 2, 1944 (R. 4). The complaint was dismissed with prejudice and costs awarded Carrier Corporation on June 11, 1945 (R. 103-104). The final judgment stated

> "Defendant Carrier Corporation has not infringed United States Letters Patent No. 2,219,393 as alleged in the complaint filed in this case."

For approximately four years after the entry of such final judgment in its favor, Carrier Corporation continued to sell equipment and its distributors continued to install such equipment exactly as they had done prior to the date of the final judgment, June 11, 1945. Then, in 1949, respondent threatened again to sue Carrier Corporation and its distributors on the same patent. Carrier Corporation pointed out to respondent that it, Carrier Corporation, and its distributors were engaging in exactly the same activities they had carried on prior to the final judgment which had dismissed the complaint with prejudice.

In the spring of 1950 Carrier was confronted with an ultimatum to cease such activities or be sued. Carrier thereupon filed a petition in the same District Court for an injunction against respondent to restrain it from suing or threatening to sue Carrier or its distributors for infringement of said patent if the equipment and activities carried on by them was the same as that carried on prior to the date of such final judgment (R. 108-113). The District Court held that it *lacked jurisdiction* to entertain Carrier's petition and indicated that Carrier should start a new suit "through an action for declaratory relief" (R. 133). The Court of Appeals for the Ninth Circuit affirmed the ruling of the District Court without any opinion (R. 293).

Specification of Errors to be Urged

The Court of Appeals erred:

1. In failing to hold that the District Court had jurisdiction to enforce its own final judgment.

2. In failing to hold that Carrier was under no burden to file a new suit for declaratory judgment.

3. In affirming the order of the District Court.

Reasons for Granting the Writ

The decision of the court below in the instant case is in direct conflict with the decision of this Court set forth in *Root* v. *Woolworth*, 150 U. S. 401, 26 L. Ed. 1123. In that case, this Court held that

> "* * * a court of equity has jurisdiction to carry into effect its own orders, decrees, and judgments, which remain unreversed, when the subject matter and the parties are the same in both proceedings." * * *

This is exactly the situation here where Carrier and Refrigeration Engineering are the same parties, the patent is the same, and the activity is the same.

This Court in *Root* v. *Woolworth* ruled that courts of equity have jurisdiction to enforce their own decrees to avoid relitigation of a question settled by a final judgment.

> "The jurisdiction of courts of equity to interfere and effectuate their own decrees by injunctions or writs of assistance in order to avoid the relitigation of questions once settled between the same parties, is well settled. Story, Eq. Pl. (9th ed.) Section 959; *Kershaw* v. *Thompson,* 4 Johns. Ch. 609, 612; *Schenck* v. *Conover,* 13 N. J. Eq. 220; *Buffum's Case,* 13 N. H. 14; *Shepherd* v. *Twogood,* Tur. & Rus. 379; *Davis* v. *Bluck,* 6 Beav. 393. In *Kershaw* v. *Thompson,* the authorities are fully reviewed by Chancellor Kent, and need not be re-examined here."

This rule has never been reversed. To allow the decisions below in this instance to stand would be to nullify it. In fact, it would require relitigation by compelling a defendant who has obtained a final judgment to bring a new suit for declaratory judgment in which a new record would be built, the defendant again put to expense and uncertainty while the old plaintiff spills the same arguments and meanwhile injures the defendant's business and disrupts its distribution in the field. The decisions below that Carrier should proceed to obtain relief by a new suit for declaratory judgment and not by an ancillary proceeding, on the ground that the original court has no *jurisdiction,* would not only place an unwarranted burden on Carrier, but *would destroy the efficacy of a final judgment.*

Decisions below are in conflict with the rule in the Second Circuit

The decisions below are in conflict with *Pell et al.* v. *McCabe et al.,* 256 Fed. 512, where the Circuit Court of Appeals, Second Circuit, clearly held that a new suit need

not be filed and that the Court had jurisdiction in an ancillary proceeding, such as that brought by Carrier below:

> "It is a rule, subject to but one exception, that jurisdiction in an ancillary proceeding is supported by the jurisdiction of the Court in the main, or principal cause. Hence the ordinary jurisdictional averments may be dispensed with in such a proceeding. If a court has jurisdiction of the principal suit, it also has jurisdiction of any ancillary proceeding in that suit." * * *

The Court emphasized that once jurisdiction is had over a particular subject matter, such jurisdiction is retained in order to enforce the Court's judgment.

> "The jurisdiction of a court over a particular subject-matter and that court's power to apply a remedy no doubt are coextensive; so that demands which are ancillary to the main action may be taken cognizance of by the court and determined in aid of its authority over the principal matter, and a court may entertain proceedings ancillary to its judgment or decree, for the jurisdiction it originally acquired is not exhausted by the entry of the judgment, and the power is still in the court to issue all proper process and take all proper proceedings *for the enforcement of its judgment.* All this is familiar doctrine and well-established law." (Italics ours.)

This doctrine has been consistently followed in cases decided subsequent to the passage of the Declaratory Judgments Act, *Georgia Railroad & Banking Company* v. *Redwine,* 85 Fed. Supp. 749 (1949); *International Union* v. *Eagle-Picher M. & S. Co.,* 325 U. S. 335 (1945); *Toucey* v. *New York Life Insurance Company,* 314 U. S. 118.

Thus, the District Court has jurisdiction to enforce its own final judgment, and the existence of a possible avenue of relief under the Declaratory Judgments Act neither destroys the jurisdiction always had to enforce a final judg-

ment nor compels a litigant subsequent to a battle finally won to start a new suit on the same issue against the same aggressor.

Conclusion

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

HERMAN SEID,
Counsel for Petitioner.

May 9, 1951.